

PATENT APPLICATION
Docket No. 6647-020

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Viyyokara Raman RAMACHANDRAN, et al.

Serial No.: 09/815,454 Group No.: 2134

Filed: March 22, 2001 Examiner: David Yiuk JUNG

For: CROSS DOMAIN AUTHENTICATION AND SECURITY SERVICES
USING PROXIES FOR HTTP ACCESSMail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

This review is requested for the reason(s) states on the attached sheet(s). Note: no more than five (5) pages may be provided.

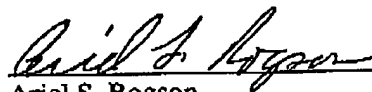
I am the:

- ☐ applicant/inventor
☐ assignee of record of the entire interest
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed)
☒ attorney or agent of record
☐ attorney or agent acting under 37 CFR 1.34

Total of ONE forms are submitted.

Customer No. 45842

Respectfully submitted,
MARGER JOHNSON & McCOLLOM, P.C.


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571-273-8300, on September 20, 2005.


Christina Lawton

SEP 20 2005

PATENT APPLICATION
Docket No. 6647-020
Novell Ref. IDR-489

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Viyyokaran Raman RAMACHANDRAN et al.
Serial No. 09/815,454 Examiner: David Yiuk JUNG
Filed: 3/22/2001 Group Art Unit: 2134
Title: CROSS DOMAIN AUTHENTICATION AND SECURITY SERVICES USING
PROXIES FOR HTTP ACCESS

Confirmation No. 7637

Mail Stop AF
Commissioner for Patents
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Alexandria, VA 22313-1450

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

The Examiner has failed to establish a publication date for the reference

In the Office Action dated September 8, 2004, the Examiner first rejected the claims under 35 U.S.C. § 103(a) as being unpatentable over Windows 2000 Authentication (<http://www.comptechdoc.org/os/windows/win2k/win2kauthentication.html>) ("the Windows 2000 article"). As the reference is an electronic publication, its use is governed by MPEP § 2128, which states that "[i]f the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art." The Examiner failed to establish a publication date for the reference, and so under MPEP § 2128, this reference is not available under 35 U.S.C. § 102(a) or (b), and therefore is not available under 35 U.S.C. § 103(a).

In an effort to aid the Examiner, the Applicant attempted to establish a publication date for the reference. The earliest date the Applicant could establish for the Windows 2000 article was October 28, 2001, based on the introduction website page for the Windows 2000 article (<http://www.comptechdoc.org/os/windows/win2k/index.html>). As October 28, 2001 is after the filing date of the patent application, the Windows 2000 article cannot be established as having been published before the filing date of the patent application, and so is not prior art to the claimed invention.

For more detail, please refer to the Response to the Office Action dated September 8, 2004, pages 10-11, and the Response to the Office Action dated April 21, 2005, pages 8-9.

Application Serial No. 09/815,454

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The Examiner has made unsubstantiated assumptions to support the claim rejections

In a telephone interview on September 12, 2005, the Examiner suggested that the reference would be appropriate if two assumptions were made. Specifically, the Examiner first assumes that an article would normally identify which service pack added a particular feature, and that because the Windows 2000 article does not identify the authentication feature as having been added in a service pack, the feature was present in the original release of the Windows 2000 operating system. The Examiner then assumes that because the feature was in the original release of the Windows 2000 operating system, the technology was known in the art at least as far back as the year 2000.

The Applicant does not concede either assumption to the Examiner, and believes the Examiner should establish these assumptions as fact. Unless and until the Examiner's assumptions are established as facts, they cannot be used to justify rejecting the claims.

There is no proof that the authentication feature was part of the original release of the Windows 2000 operating system

The Examiner's argument that an author would have identified which service pack added the authentication feature if it had not been in the Windows 2000 operating system originally is unsupported. Even if such were true in some cases, that would not establish the Examiner's assumption as a fact with respect to the Windows 2000 article. Authors are permitted to write however they like: if they want, they are free to ignore what are otherwise considered general rules of authorship in the technical field. Thus, there is no proof offered by the Examiner that the author of the Windows 2000 article, by failing to describe the authentication feature as being added in a service pack of the Windows 2000 operating system, intended the reader to conclude that the feature was present in the original release of the Windows 2000 operating system. The reverse assumption is equally warranted: because the Examiner has not presented any articles describing the authentication feature before the release of the first service pack for the Windows 2000 operating system, the feature must have been added later. Since the burden is on the Examiner to find proper prior art, the Examiner should not be permitted to make assumptions in an attempt to argue that a teaching that on its face is not prior art can still be used to reject claims.

Even if the authentication feature were part of the original release of the Windows 2000 operating system, there is no proof that the invention was known

Even if the Examiner's first assumption, that the authentication feature was part of the original release of the Windows 2000 operating system, were correct, the Examiner should still

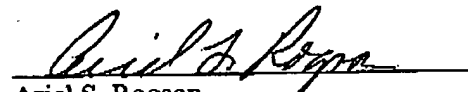
be required to justify his further assumption that the feature was publicly known. The Windows 2000 operating system is a product of Microsoft Corporation. Microsoft Corporation is well known to hide how they implement their technology. For example, Microsoft Corporation is known to have special "hooks" in their operating systems that are used to aid in the operation of their application software, but which are not made known to the public, so as to hinder their competition in the application software arena. This was part of the District Court's Findings of Fact in *U.S. v. Microsoft*, Civil Action 98-1232 (D.C.D.C., 1999), a copy of which is available at <http://www.usdoj.gov/atr/cases/f3800/msjudge.pdf>; pertinent paragraphs ¶¶ 90-92 (pages 46-47) are attached hereto. Thus, even if the disclosed authentication feature had been part of the original release of the Windows 2000 operating system, this fact did not mean that the authentication feature, or how it operated, was publicly known, which shows that the Examiner's second assumption is also unwarranted.

For more detail, please refer to the Response to the Office Action dated September 8, 2004, page 11.

The Applicant also asserts all arguments made previously, whether or not explicitly discussed herein, to preserve the right to assert these arguments in the Appeal Brief. For example, the Applicant has previously argued that the "password" described in the Windows 2000 article is not the same as the "shared secret" of the claimed invention, and that the Windows 2000 article does not teach cross-domain identification authentication. The Applicant believes that the Windows 2000 article is not proper prior art under 35 U.S.C. § 102(a) or (b), and therefore is not available as prior art under 35 U.S.C. § 103(a). But if the Windows 2000 article is proper prior art, the Applicant reserves the right to argue in the Appeal Brief that the Windows 2000 article does not teach or suggest the features of the claimed invention so as to make the claims unpatentable under 35 U.S.C. § 103(a).

Respectfully submitted,

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SEP 20 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (TPJ)

STATE OF NEW YORK, ex rel.
Attorney General ELIOT SPITZER,
et al.Plaintiffs and
Counterclaim-Defendants,

v.

MICROSOFT CORPORATION,

Defendant and
Counterclaim-Plaintiff.

Civil Action No. 98-1233 (TPJ)

FINDINGS OF FACT

These consolidated civil antitrust actions alleging violations of the Sherman Act, §§ 1 and 2, and various state statutes by the defendant Microsoft Corporation, were tried to the Court, sitting without a jury, between October 19, 1998, and June 24, 1999. The Court has considered the record evidence submitted by the parties, made determinations as to its relevancy and materiality, assessed the credibility of the testimony of the witnesses, both written and oral, and

Attachment A
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Netscape's acceptance of Microsoft's proposal would have left the firm with even the ability to survive as an independent business.

89. At the time Microsoft presented its proposal, Navigator was the only browser product with a significant share of the market and thus the only one with the potential to weaken the applications barrier to entry. Thus, had it convinced Netscape to accept its offer of a "special relationship," Microsoft quickly would have gained such control over the extensions and standards that network-centric applications (including Web sites) employ as to make it all but impossible for any future browser rival to lure appreciable developer interest away from Microsoft's platform.

B. Withholding Crucial Technical Information

90. Microsoft knew that Netscape needed certain critical technical information and assistance in order to complete its Windows 95 version of Navigator in time for the retail release of Windows 95. Indeed, Netscape executives had made a point of requesting this information, especially the so-called Remote Network Access ("RNA") API, at the June 21 meeting. As was discussed above, the Microsoft representatives at the meeting had responded that the haste with which Netscape received the desired technical information would depend on whether Netscape entered the so-called "special relationship" with Microsoft. Specifically, Microsoft representative J. Allard had told Barksdale that the way in which the two companies concluded the meeting would determine whether Netscape received the RNA API immediately or in three months.

91. Although Netscape declined the special relationship with Microsoft, its executives continued, over the weeks following the June 21 meeting, to plead for the RNA API. Despite

Netscape's persistence, Microsoft did not release the API to Netscape until late October, i.e., as Allard had warned, more than three months later. The delay in turn forced Netscape to postpone the release of its Windows 95 browser until substantially after the release of Windows 95 (and Internet Explorer) in August 1995. As a result, Netscape was excluded from most of the holiday selling season.

92. Microsoft similarly withheld a scripting tool that Netscape needed to make its browser compatible with certain dial-up ISPs. Microsoft had licensed the tool freely to ISPs that wanted it, and in fact had cooperated with Netscape in drafting a license agreement that, by mid-July 1996, needed only to be signed by an authorized Microsoft executive to go into effect. There the process halted, however. In mid-August, a Microsoft representative informed Netscape that senior executives at Microsoft had decided to link the grant of the license to the resolution of all open issues between the companies. Netscape never received a license to the scripting tool, and as a result, was unable to do business with certain ISPs for a time.

C. The Similar Experiences of Other Firms in Dealing with Microsoft

93. Other firms in the computer industry have had encounters with Microsoft similar to the experiences of Netscape described above. These interactions demonstrate that it is Microsoft's corporate practice to pressure other firms to halt software development that either shows the potential to weaken the applications barrier to entry or competes directly with Microsoft's most cherished software products.